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"Stage One" U.S.-Japan Agreement: Agriculture

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SUMMARY

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"Stage One" U.S.-Japan Agreement: Agriculture

On October 7, 2019, the United States and Japan signed the U.S.-Japan Trade Agreement (USJTA), which provides for limited tariff reductions and quota expansions to improve U.S. access to Japan's market, covering mostly agricultural products. The agreement, which entered into force January 1, 2020, also provides for reciprocal U.S. tariff reductions, largely on industrial goods. Japan previously negotiated agricultural market access provisions with the United States in the context of the Trans-Pacific Partnership (TPP), a 2016 agreement among 12 Pacific-facing nations that the United States did not ratify. Those provisions were folded into the agreement that the remaining TPP countries agreed upon—the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)—that went into force for Japan on December 30, 2018.

In addition to the CPTPP, Japan recently ratified one other preferential trading agreement, the Japan-European Union Economic Partnership Agreement (JEEPA). Both agreements, which are comprehensive in scope, lowered Japan's barriers to agricultural imports from the European Union (EU) member countries and the CPTPP participants, placing U.S. exporters at a disadvantage in certain ways. In the "Stage-One" agricultural agreement, the Trump Administration sought to address the tariff-related disadvantages faced by U.S. agricultural exporters in the Japanese market, leaving other matters for future negotiation.

Under USJTA, Japan agreed to accelerate and adjust its tariff-rate quota expansion and tariff reduction schedule such that Japan's imports of affected U.S. agricultural products would receive the same level of market access as imports from the CPTPP countries. Under USJTA, Japan agreed to improve access for U.S. meat products, fruit, vegetables, most grains, dairy, and processed products. While Japan's tariff schedule under the USJTA attempts to match the CPTPP schedule, the USJTA excludes some quotas that the United States had negotiated with Japan under the TPP. These TPP quotas excluded from USJTA cover imports of U.S. rice that was specific to the United States and other quotas that are open to all CPTPP members. The latter cover barley and barley products other than malt; butter; skim and other milk powder; cocoa products; evaporated and condensed milk; edible fats and oils; vegetable preparations; coffee, tea, and other preparations; chocolate, candies, and confectionary; and sugar.

The USJTA is narrower in scope than either the CPTPP or JEEPA. Because of the legal authority under which the United States negotiated the USJTA, the agricultural provisions address only market access—border controls such as tariffs and quotas—and do not include non-tariff measures. The USJTA does not have provisions on trade of organic products, sanitary and phytosanitary measures, technical barriers to trade, agricultural biotechnology, and geographical indications. As a result, U.S. agricultural exporters may continue to be disadvantaged in the Japanese market against those from the CPTPP countries or the EU. Lack of legal text on non-market-access provisions in the USJTA may preclude the United States from seeking recourse if Japan were to align its requirements for agricultural imports more closely with those of the EU or of other CPTPP countries.

Japan is an important market for U.S. farmers and ranchers, accounting for about 9% of total U.S. agricultural exports to all destinations since 2014. In 2019, U.S. agricultural exports to Japan were $11.7 billion in value, of which corn, beef, pork, soybeans, and wheat made up more than 60%. This was lower than the $12.9 billion in 2018, as CPTPP countries eroded the Japanese market for U.S. exporters, among other factors.

The USJTA and the approach that the Trump Administration took to negotiate it represent a significant shift in U.S. trade policy. Given its constitutional authority to regulate foreign commerce, Congress may reflect on whether this shift aligns with congressional objectives. Congress may also consider the impact of the agreement on the U.S. economy, including the implications of negotiating a broader second-stage deal with Japan and the possible effects of a staged approach on the United States' ability to achieve additional agreements. Congress may also wish to consider the best approach to advancing agricultural interests in the next stage of talks with Japan, as well as the potential costs and benefits of U.S. participation in comprehensive agreements such as the CPTPP.

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Introduction

On October 7, 2019, the United States and Japan signed the U.S.-Japan Trade Agreement (USJTA), which provides for limited tariff reductions and quota expansions to improve U.S. access to Japan's market, covering mostly agricultural products. The agreement, which entered into force January 1, 2020, also provides for reciprocal U.S. tariff reductions, largely on industrial goods.

Japan previously negotiated agricultural market access provisions with the United States in the context of the Trans-Pacific Partnership (TPP), a 2016 agreement among 12 Pacific-facing nations[1] that the United States did not ratify. Those provisions were folded into the agreement that the remaining TPP countries agreed upon—the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)—that went into force for Japan on December 30, 2018.[2] As Japan began to improve market access for CPTPP countries, various U.S. agricultural exports to Japan became less competitive compared to Japanese imports from CPTPP countries.

In addition to the CPTPP, Japan recently ratified one other preferential trading agreement, the Japan-European Union Economic Partnership Agreement (JEEPA).[3] These agreements, which are comprehensive in scope, lowered Japan's barriers to agricultural imports from the 28 European Union (EU) member countries, the four European Economic Area countries that do not belong to the EU but accept EU trade rules,[4] and the 10 other signatories to the CPTPP, placing U.S. exporters at a disadvantage in certain ways. In the initial "Stage-One" USJTA, the Trump Administration sought to address only the tariff-related disadvantages faced by U.S. agricultural exporters in the Japanese market, leaving other matters for future negotiation. Negotiations for a "Stage-Two" agreement have yet to begin.

Agricultural Provisions of the U.S.-Japan Trade Agreement

Under the USJTA, the two countries agreed to provide increased market access for each other's agricultural products.[5] Japan agreed to eliminate or reduce tariffs for certain U.S. agricultural products and to provide preferential quotas for other U.S. agricultural products, essentially providing the same level of market access to these products as provided to exports from countries that are members of the CPTPP. According to the Office of the U.S. Trade Representative (USTR), once all provisions of this agreement have been implemented, over 90% of U.S. food and agricultural products imported into Japan will either enter duty free or receive preferential

[1] The TPP signatories included Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States.

[2] New Zealand Ministry of Foreign Affairs and Trade, "Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources," February 21, 2018, at https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/.

[3] For more information, see CRS In Focus IF11099, *EU-Japan FTA: Implications for U.S. Trade Policy*, by Cathleen D. Cimino-Isaacs.

[4] These are Switzerland, Norway, Iceland and Liechtenstein.

[5] Office of the U.S. Trade Representative (USTR), "U.S.-Japan Trade Agreement Text," October 7, 2019, at https://ustr.gov/countries-regions/japan-korea-apec/japan/us-japan-trade-agreement-negotiations/us-japan-trade-agreement-text.

tariff access.[6] In turn, the United States agreed to reduce or eliminate tariffs on 42 agricultural tariff lines for imports from Japan.

When CPTPP went into effect,[7] Japan implemented its first set of tariff cuts and tariff-rate quota (TRQ) expansions and followed these with a second and third round of tariff cuts and TRQ expansions on April 1, 2019, and April 1, 2020. TRQs involve a two-tiered tariff scheme in which imports within an established quota face lower tariff rates and imports beyond the quota face higher tariff rates. Under USJTA, Japan agreed to accelerate and adjust its TRQ expansion and tariff reduction schedule such that Japan's imports of affected U.S. agricultural products would receive the same level of market access as imports from CPTPP countries. This means that tariff rates under the USJTA fall slightly faster than those under CPTPP. For example, under CPTPP, tariffs on beef imports into Japan, previously 38.5%, were reduced to 27.5% in Year 1 and 26.6% in Year 2 and are to reach 9% in Year 16. Under the USJTA, tariffs on Japanese imports of U.S. beef were reduced to 26.6% in Year 1 and will reach 9% in Year 15.

Key Market Access Provisions for U.S. Agricultural Products

- **Japan agreed to reduce tariffs on meat products** that collectively accounted for $2.9 billion of U.S. exports to Japan in 2018, the base year for comparison.[8] Tariffs on processed beef products, including beef jerky and meat extracts, will be eliminated in 5 to 15 years. Japan's right to raise tariffs if imports of U.S. beef exceed a specified level would be restricted and will be eliminated if the specified level is not exceeded[9] for four consecutive fiscal years after Year 14.

  Tariffs on pork muscle cuts will be eliminated over nine years, and tariffs on processed pork products will go to zero in Year 5. Certain fresh and frozen pork products will continue to be subject to Japan's variable levies when import prices are low, but the maximum variable rate will be reduced by almost 90% by Year 9.[10] As with beef, Japan's right to raise tariffs if imports of U.S. pork exceed a specified level are restricted. Japan will gradually increase the amount of U.S. fresh, chilled, and frozen pork that can be imported annually without triggering additional tariffs, and such tariffs will be terminated at the end of Year 10.

[6] USTR, "U.S.-Japan Trade Agreement," Fact Sheet, September 2019, at https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-us-japan-trade-agreement#.

[7] New Zealand Ministry of Foreign Affairs and Trade, "Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources," February 21, 2018, at https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/.

[8] Trade statistics in this section are for the year 2018, which serves as a base year for comparison. As CPTPP entered into force in December 30, 2018, U.S. exports to Japan declined in 2019 and would be inappropriate for reference.

[9] This concerns safeguard tariffs, which are temporary increases applied when trade within a specific tariff line increases beyond a certain threshold or import unit values fall below a threshold level. Japan has agreed to a specific annual threshold for U.S. exports that would trigger safeguard tariffs, separate from the threshold it applies to beef imports in general, and has also agreed to annual increases in the threshold for U.S. beef.

[10] Under the "gate-price mechanism," Japan charges a variable duty on pork and onions, based on the difference between a specified price and the import unit value, so long as the import unit value is lower. This may include specific tariffs that are applied as a specific monetary value per quantitative unit (such as per ton or per kilogram) as well as *ad valorem* tariffs that are applied as a percentage of the import value of a good. If the shipment's import unit value is above the specified price, only the *ad valorem* tariff is charged. See John Dyck and Shawn Arita, "Japan's Agri-Food Sector and the Trans-Pacific Partnership," *Economic Information Bulletin*, Number 129, U.S. Department of Agriculture (USDA), Economic Research Service (ERS), October 2014.

- **Japan eliminated tariffs immediately upon entry into force of the agreement on selected products**—including almonds, walnuts, blueberries, cranberries, sweet corn, grain sorghum, and broccoli—that collectively accounted for $1.3 billion of U.S. exports to Japan in 2018. Tariffs on corn used for feed, the largest U.S. agricultural export to Japan ($2.8 billion in 2018), were also eliminated upon entry into force of the agreement.[11]
- **Japan is phasing out tariffs in stages for certain products** that accounted for $3 billion of U.S. exports in 2018, such as cheeses, processed pork, poultry, beef offal, ethanol, wine, frozen potatoes, oranges, fresh cherries, egg products, and tomato paste.
- **Japan agreed to provide country-specific quotas (CSQ) for some products**, which provide access to a specified quantity of imports from the United States at a preferential tariff rate, generally zero. The CSQs provide these products the same access into Japan as would have been accorded under the terms of the unratified TPP. Products covered by CSQs include wheat, wheat products, malt, processed cheese, glucose, fructose, corn starch, potato starch, and inulin. Additionally, Japan agreed to create a single whey CSQ for the United States that begins at 5,400 metric tons (MT) and grows to 9,000 MT in Year 10. This CSQ combines the provisions of three separate CSQs for whey under the TPP provisions: whey used in infant formula (3,000 MT); whey mineral concentrate (4,000 MT); and whey permeate (2,000 MT).
- **Japan agreed to improve access for U.S. skim milk powder** by introducing an annual global tender for 750 MT of skim milk powder.[12] This may not represent a notable gain in market access given that the United States exported 713,000 MT of skim milk powder in 2018.[13]
- **Japan agreed to reduce the government-mandated mark-up** on imported U.S. wheat and barley, imports of which are controlled by state trading enterprises.[14]
- **Japan agreed to limit the use of safeguard measures** to control surges in imports of U.S. whey, oranges, and race horses.

[11] Note that Japan's current tariff on soybeans, another important export commodity for the United States, is zero.

[12] USTR, "U.S.-Japan Trade Agreement Text, Side Letter on Skimmed Milk Powder," October 7, 2019, at https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Skimmed_Milk_Powder.pdf. Note, the global TRQ for skim milk powder under the CPTPP starts at 20,659 MT in Year 1 and reaches 24,102 MT in Year 10.

[13] USDA, FAS, *Dairy: World Markets and Trade*, July 2019. Note that U.S. exports are for non-fat dry milk as defined by United States standards and regulations, while skim milk powder is defined by an international standard appearing in the *Codex Alimentarius*. Non-fat dry milk has protein content requirements and does not include food additives. Under the Codex standard, skim milk powder can have a lower protein content than the level required by the U.S. standard and can contain food additives. All U.S. non-fat dry milk meet the Codex skim milk powder requirement but all skim milk powder may not meet the U.S. non-fat dry milk standard. For more, see American Dairy Products Institute, "Nonfat Dried Milk and Skim Milk Powder –All The Same or Different?" ADPI Intelligence, vol. 5, issue 1, accessed October 2020, at https://www.adpi.org/Portals/0/Academy/Intel%20and%20Commentaries/Nonfat%20Dried%20Milk%20and%20Skim%20Milk%20Powder%20%E2%80%93%20All%20the%20same%20or%20different.pdf.

[14] For more on this see, John Dyck and Shawn Arita, "Japan's Agri-Food Sector and the Trans-Pacific Partnership," *Economic Information Bulletin*, Number 129, USDA, ERS, October 2014.

Provisions Affecting U.S. Imports from Japan

The United States agreed to reduce tariffs on imports of certain perennial plants and cut flowers, persimmons, green tea, chewing gum, certain confectionary products, and soy sauce. In a side letter, the United States agreed to modify its tariff-rate quota (TRQ) for imports of Japanese beef.[15] The United States agreed to eliminate the 200 MT country-specific beef quota for Japan and increase its quota for "other countries or areas" to 65,005 MT. This would enable Japan to ship additional amounts of beef to the United States at low tariff rates under the increased "other countries or areas" quota.[16]

Japan's Other Trade Agreements and U.S. Exports

Japan's agreement with the United States follows its recent preferential trading agreements with other countries that have eroded U.S. shares of the Japanese markets for many agricultural products. Japan is a party to two recent comprehensive agreements of this nature. CPTPP, which was agreed upon by 11 countries but entered into force on December 30, 2018, for a subset of countries, currently provides for the liberalization of agricultural trade among Australia, Canada, Japan, Mexico, New Zealand, Singapore, and Vietnam.[17] JEEPA entered into force on February 1, 2019.[18] When the USJTA entered into force, these two agreements had already initiated a process of expanding quotas and phasing out tariffs on various agricultural imports into the Japanese market.

While the Trump Administration has stated that the USJTA should "enable American [agricultural] producers to compete more effectively with countries that currently have preferential tariffs in the Japanese market,"[19] the USJTA is narrower in scope than either CPTPP or JEEPA. In particular, because of the legal authority under which the United States negotiated the USJTA, the agricultural provisions address only market access—border controls such as tariffs and quotas—while CPTPP and JEEPA also address many other policies that may interfere with trade in agricultural products.

Notably, the USJTA does not include a formal dispute settlement mechanism to enforce commitments should either side take fault with the other's implementation.[20] Article 6 of the

[15] USTR, "U.S.-Japan Trade Agreement Text, Side Letter on Beef," October 7, 2019, at https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Beef.pdf. A side letter is an agreement that is not part of the primary trade agreement, and is used to reach agreement on issues the primary agreement does not cover or that need clarification, or to amend the primary agreement.

[16] USTR, "U.S.-Japan Trade Agreement Text, Side Letter on Beef," October 7, 2019, at https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Beef.pdf.

[17] For the full text of the agreement see New Zealand Ministry of Foreign Affairs and Trade, "Comprehensive and Progressive Agreement for Trans-Pacific Partnership text and resources," February 21, 2018, at https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/.

[18] For the full text of the agreement see, the European Commission, "EU-Japan Economic Partnership Agreement," February 1, 2019, at https://ec.europa.eu/trade/policy/in-focus/eu-japan-economic-partnership-agreement/.

[19] USTR, "Agriculture-Related Provisions of the U.S.-Japan Trade Agreement," Fact Sheet, September 2019, at https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-agriculture%E2%80%90related.

[20] Typically, U.S. FTAs include specific procedures for resolving disputes, which include the option to establish a dispute settlement panel with possible punitive measures, including the withdrawal of trade concessions (i.e., a return of tariffs to their pre-agreement levels), if the panel finds that a party failed to adhere to agreement provisions. See CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

USJTA lays out a 60-day consultation process for resolving issues relating to "the operation or interpretation" of the agreement as a means to resolve disputes relating to tariffs and quota commitments, but lacks a binding resolution process.[21] As a result, should a dispute arise, U.S. agricultural exporters could be at a disadvantage in the Japanese market against those from the CPTPP countries or from the EU. Lack of legal text on non-market-access provisions in the USJTA may preclude the United States from seeking recourse if Japan were to align its non-tariff measures for agricultural imports more closely with those of the EU or CPTPP countries, although it could pursue this through the World Trade Organization (WTO). Among the subjects that may be affected by these discrepancies are:

Agricultural biotechnology. The CTPPP includes provisions for cooperation and information exchange among its 11 signatories to facilitate trade in products of agricultural biotechnology.[22] The European Commission regulates agricultural biotechnology products, including imported products, using the "precautionary principle," prohibiting a product when there is doubt about its safety rather than waiting for conclusive proof that it poses environmental or health risks. This principle is also part of JEEPA.[23] If Japan were to change its regulations to better align with the EU's, some U.S. exports now sold in Japan might no longer be permitted. Moreover, the EU has stated that JEEPA "will not change EU rules on hormone-treated beef or GMOs [genetically modified organisms]" and that "Japanese consumers also share the same concerns about GMOs as their European counterparts."[24] As the USJTA does not include provisions on agricultural biotechnology, it is not clear whether the agreement would protect U.S. exporters' ability to sell hormone-treated beef or products containing GMOs should Japan change its domestic regulations on these subjects.

Geographical indications. The EU permits extensive use of geographical indications (GIs), place names that identify a distinctive product originating in a certain region. These have become a contentious international trade issue.[25] For example, in the United States, "feta" is considered the generic name for a type of cheese. However, "feta" refers to a specific variety of cheese produced in Greece and is protected as a GI in Europe. As such, U.S cheese labeled "feta" may not be imported for sale in the EU, where only feta produced in countries or regions that are entitled to apply that name to cheese may be sold commercially. An EU fact sheet on JEEPA states that, "The EU-Japan EPA foresees full protection for more than 200 EU GIs (foodstuffs, wines and spirits)."[26] This could become an obstacle for U.S. exports to Japan of other types of cheese such as asiago, fontina, and gorgonzola.[27] All of those names are trademarked

[21] "USTR Cites Consultation Process as Primary Enforcement Tool in Japan Deal," *Inside U.S. Trade*, October 15, 2019.

[22] New Zealand Ministry of Foreign Affairs and Trade, CPTPP, Text and Resources, Chapter 2, National Treatment and Market Access for Goods, Section C, Agriculture, Article 2.27, Trade of Products of Modern Biotechnology, February 21, 2018, at https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/cptpp.

[23] EU-Japan Economic Partnership Agreement, "An Introduction to the EU-Japan Economic Partnership Agreement," Fact Sheet, accessed September 2019, at https://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155718.pdf.

[24] Ibid.

[25] For more on this see, CRS Report R45728, *Major Agricultural Trade Issues in the 116th Congress*, coordinated by Anita Regmi.

[26] EU Business in Japan, "EPA & Geographical Indications," EU-Japan Center for Industrial Cooperation, accessed September 2019, at https://www.eubusinessinjapan.eu/issues/economic-partnership-agreement/epa-geographical-indications.

[27] Consortium for Food Names, "Europe Won't Own "Parmesan" and "Bologna" in Japan: Japan Rejects EU Attempts To Confiscate Many Generic Names," December 20th, 2017; and also see letter from members of Congress to USTR, September 20, 2019, at https://kind.house.gov/sites/kind.house.gov/files/9.20.19%20-

geographical indications in the EU but hitherto have not had a similar status in Japan. Certain wines and sausages produced in the United States are also commonly sold under names that are protected as GIs in the EU. As the USJTA does not address this issue, depending on the extent of alignment of regulation in Japan with the EU on geographical indications, the United States may not be able to export to Japan products sold under names that appear on the list of protected GIs unless the exporters agree to market the products under names that are not protected in the EU. The CPTPP includes provisions for determining a common name and a protected GI, and some limited due-process commitments on GIs. These commitments ensure a formal process for raising objections when new third-party agreements by one member potentially disadvantage the exports of another. This process could constrain Japan's adoption of EU rules on GIs.[28]

Sanitary and phytosanitary measures. CPTPP provides for the establishment of a committee on sanitary and phytosanitary measures (SPS) related to trade rules and standards that address issues of food safety, plant pests, and animal diseases.[29] Lack of similar language in the USJTA could potentially allow U.S. exports of certain products to be excluded from Japan if the CPTPP SPS Committee determines that certain chemicals used in the United States in food production or processing create risks that exceed the levels specified by the committee.

Technical barriers to trade. Three annexes to CPTPP pertain to technical regulations, standards, and the conformity assessment procedures relevant to food and agriculture. One of these establishes parameters for labeling and certifying wine and distilled spirits, including specifying what information is permitted on the label and terms that may not be excluded, such as "chateau," "reserve," and others.[30]

Another CPTPP annex provides that in adopting and applying technical regulations and standards, CPTPP members are to limit information requirements to what is necessary to achieve legitimate objectives and to assure commercial interests are protected by treating the confidentiality of the information from other member states as it would for domestic products.[31]

The third relevant annex encourages CPTPP member countries that maintain requirements for organic products to consider expeditiously any requests from other CPTPP members for recognition or equivalence of standards, technical regulations, and other regulatory processes, and to explain the reasons for the denial of any such requests.[32] Moreover, it includes provisions for "technical exchanges to support improvement and greater alignment of technical regulations,

%20USTR%20Japan%20Trade%20Agreement.pdf.

[28] New Zealand Ministry of Foreign Affairs and Trade, CPTPP, Text and Resources, Chapter 18, Intellectual Property, Section E, Geographical Indications, February 21, 2018, at https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/cptpp.

[29] For more information on SPS, see CRS Report R43450, *Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade*, by Renée Johnson.

[30] New Zealand Ministry of Foreign Affairs and Trade, CPTPP, Text and Resources, Chapter 8, Technical Barriers to Trade, Annex 8-A Wine And Distilled Spirits, February 21, 2018, at https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/cptpp.

[31] New Zealand Ministry of Foreign Affairs and Trade, CPTPP, Text and Resources, Chapter 8, Technical Barriers to Trade, Annex 8-F Proprietary Formulas For Prepackaged Foods and Food Additives, February 21, 2018, at https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/cptpp.

[32] New Zealand Ministry of Foreign Affairs and Trade, CPTPP, Text and Resources, Chapter 8, Technical Barriers to Trade, Annex 8-G, Organic Products, February 21, 2018, at https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/cptpp.

standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic."[33]

The USJTA does not contain similar provisions or annexes. At issue here is whether the confidentiality of U.S. exporters will be similarly protected under USJTA and whether harmonization of labelling, organic regulations and standards by the 11 CPTPP members may not align with those of the United States and thus cause a disadvantage.

Market Access: Comparison with JEEPA and CPTPP

Before USJTA, U.S. agricultural exports to Japan faced higher tariffs under WTO Most Favored Nation (MFN) provisions than provided under the preferential tariffs and expanded tariff-rate quotas available to members of CPTPP and JEEPA. In particular, imports from the United States beyond the amounts covered by the in-quota rates faced, and may continue to face, high tariffs, some exceeding 500%.[34] Japan's simple average MFN tariff on all agricultural imports was 15.5% in 2019. Almost 19% of the Japanese agricultural tariff lines had MFN tariff rates greater than 15%.[35] Many of the agricultural products subject to in-quota tariffs are subject to additional mark-ups through the state trading system, making the products more expensive to Japanese consumers. This may tend to suppress imports as suggested by unfilled Japanese import quotas. For example, in 2017 Japan imported 29% of the amount of whey for infant formula that it allowed under the TRQ[36] and the corresponding TRQ fill rates for skim-milk powder ranged between 25% and 34%.[37] Given that many TRQs go unfilled and that over-quota tariff rates are extremely high, relatively little trade occurs beyond the set quota levels.

According to USTR, Japan had stated a commitment to "match the tariffs" provided to CPTPP member countries in the USJTA.[38] While Japan's tariff schedule under the USJTA attempts to match the CPTPP schedule, the TRQ schedule falls short of the CPTPP schedule, potentially disadvantaging market access for some U.S. agricultural products. The USJTA does not make provisions for a CSQ for U.S. rice, but Japan has made provisions for a CSQ for Australian rice under CPTPP.[39] CPTPP additionally includes provisions for global TRQs for barley and barley products other than malt; butter; skim and other milk powder; cocoa products; evaporated and condensed milk; edible fats and oils; vegetable preparations; coffee, tea, and other preparations;

[33] Ibid, at no. 5.

[34] World Trade Organization (WTO), "Japan and the WTO," October 2020, at https://www.wto.org/english/thewto_e/countries_e/japan_e.htm.

[35] Ibid.

[36] Whey for feed has a 0% in-quota tariff; whey for other uses have higher levels of tariff. Whey for infant formula has a 10% tariff. For more, see Meros Consulting, *Analyzing the Impact of the CPTPP and Japan-EU EPA on U.S. Dairy Exports to Japan*, January 2019, at http://www.usdec.org/Documents/USDECReportonImpactofJapaneseFTAsUS%20Dairy%20ExportsJan2019.pdf.

[37] Skim milk powder imported for Japan' school lunch program is duty-free; other skim milk powder imports face a 25% tariff or a complex tariff of 21%+396 yen/kg. For more, see Meros Consulting, *Analyzing the Impact of the CPTPP and Japan-EU EPA on U.S. Dairy Exports to Japan*, January 2019, at http://www.usdec.org/Documents/USDECReportonImpactofJapaneseFTAsUS%20Dairy%20ExportsJan2019.pdf.

[38] USTR, "Agriculture-Related Provisions of the U.S.-Japan Trade Agreement," Fact Sheet, September 2019, at https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2019/september/fact-sheet-agriculture%E2%80%90related.

[39] Under the TPP provisions, which the United States did not ratify, Japan had agreed to provide a U.S.-specific quota for rice, which was to start at 50,000 MT in Year 1 and reach 70,000 MT in Year 13.

chocolate, candies, and confectionary; and sugar. No corresponding TRQs are included in the USJTA.

While the USJTA includes market access provisions similar to those provided for most U.S. agricultural products in existing CPTPP language, as discussed, it does not expand access for some U.S. agricultural products, including rice and other products that the United States had negotiated global TRQs under the TPP. Additionally, CPTPP and JEEPA have given a head start to exporters from CPTPP member countries and the EU, which may render it difficult for some U.S. exporters to regain their markets in Japan. Nevertheless, the agreement takes a step toward providing market access for most U.S. agricultural exports to Japan similar to that available to members of the CPTPP, and these U.S. agricultural exports to Japan could benefit from the USJTA.

Japan Is an Important Market for U.S. Agriculture

Japan is an important market for U.S. farmers and ranchers, accounting for about 9% of total U.S. agricultural exports to all destinations since 2014.[40] In 2018, Japan was the third-largest export market, after Canada and Mexico, with $12.9 billion in U.S. agricultural exports—out of a total of $140 billion—shipped to Japan. U.S. agricultural exports to Japan have somewhat mirrored U.S. global exports, that reached a peak value in 2014 with higher grain prices. For example, U.S. marketing year average price for corn was $3.70 per bushel in 2014, and reached $3.36 per bushel in 2016,[41] leading to a decline in the value of U.S. corn exports to Japan (**Figure 1**). U.S. corn prices have since increased, with marketing year averages of $3.61 per bushel in 2018 and $3.60 per bushel in 2019. U.S. corn exports to Japan, nevertheless, fell in 2019 as Japan imported greater quantities of more competitively priced Brazilian corn.[42]

In 2019, as CPTPP countries further eroded the Japanese market for U.S. exporters, Japan fell behind China to become the fourth-largest export market for U.S. agricultural products, accounting for $11.7 billion in total agricultural exports. Corn, beef, pork, soybeans, and wheat make up more than 60% of total U.S. agricultural exports to Japan (**Figure 1**).

With CPTPP and JEEPA entering into force in early 2018, exports from the EU and the CPTPP member countries became more competitive for Japanese importers. According to Japanese customs data,[43] while Japan's total imports in 2018 and 2019 were about the same, around $36 billion, imports from the United States declined by 1% in value from $9.3 billion in 2018 to $9.2 billion in 2019. A large domestic wheat crop reduced Japan's imports of non-durum wheat by 10% in value in 2019 compared to the import value in 2018.[44] Wheat exports from the United States declined 15% in value, from $787 million in 2018 to $672 million in 2019. Imports from countries covered by JEEPA increased, although from a lower base. For example, imports from

[40] U.S. Census Bureau Trade Data, accessed via USDA, FAS, October 2020, at https://apps.fas.usda.gov/gats/default.aspx. U.S. export statistics discussed in this section use the USDA definition of agriculture. This includes all products in Chapters 1-24 of the U.S. Harmonized Tariff Schedule (except for fishery products in Chapters 3 and 16, manufactured tobacco products like cigarettes and cigars in Chapter 24, and spirits in Chapter 22); essential oils (Chapter 33); raw rubber (Chapter 40); raw animal hides and skins (Chapter 41); and wool and cotton (Chapters 51-52).

[41] USDA, World Agricultural Supply and Demand Estimates, historical database maintained by CRS.

[42] A large crop coupled with a weak currency made Brazilian corn more competitive compared to U.S. corn. For more, see USDA, FAS, "Japan Grain and Feed Annual," GAIN Report Number: JA2020-0058, March 19, 2020.

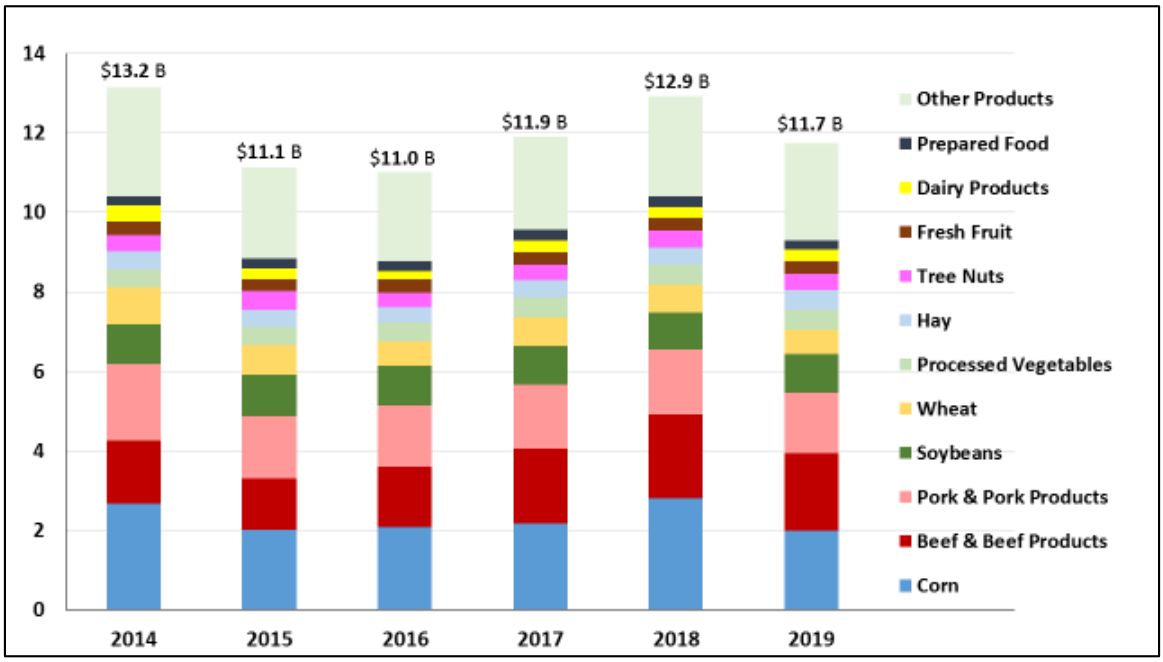
[43] Accessed via Trade Data Monitor, October 2020. Note that U.S. export and Japan's import data do not match since there is a time lag for transport of shipments leaving U.S. ports and reaching their destination in Japan. Additionally, import data include cost of transportation and insurance that are not taken into consideration in export values.

[44] USDA, FAS, "Japan Grain and Feed Annual," GAIN Report Number: JA2020-0058, March 19, 2020.

Germany increasing 100% (from $42,000 to $84,000) and from Bulgaria ($16,000 to $356,000) and Romania (none in 2018 to $8.2 million in 2019) growing over 2,000%.

Figure 1. U.S. Agricultural Exports to Japan, 2014-2019

In Nominal Billions (B) of U.S. Dollars



Source: U.S. Census Bureau Trade Data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), October 2020, https://apps.fas.usda.gov/gats/default.aspx.

Notes: The chart uses USDA's definition of agriculture, including all of the products in Chapters 1-24 of the U.S. Harmonized Tariff Schedule (except for fishery products in Chapters 3 and 16, manufactured tobacco products like cigarettes and cigars in Chapter 24, and spirits in Chapter 22); essential oils (Chapter 33); raw rubber (Chapter 40); raw animal hides and skins (Chapter 41); and wool and cotton (Chapters 51-52).

Similarly, Japan's imports of pork from the United States declined over 11% in value from $1.7 billion in 2018 to $1.5 billion in 2019. Pork imports from the EU and the CPTPP countries increased. For example, Japan's pork imports from Germany grew 22% (from $135 million to $165 million), Mexico 16% ($450 million to $523 million), Spain 11% ($552 million to $614 million), Netherlands 10% ($167 million to $184 million), and Canada 5% (from $1.1 billion to $1.2 billion) during the same period. Much the same is true of beef: Japan's 2019 imports of beef from Canada, a CPTPP signatory, increased 90% compared with 2018 (from $144 million to $174 million), and its beef imports from New Zealand ($131 million to $159 million) and Mexico ($75 million to $88 million), both CPTPP signatories, increased 21% and 17% respectively. Japan's imports of U.S. beef declined 1% from $2.04 billion in 2018 to $2.01 billion in 2019, while total Japanese beef imports increased 4% during the same period from $4.3 billion to $4.5 billion.

Given the reduced value of shipments of key U.S. products to Japan, U.S. agricultural exports to Japan declined 9% from a value of $12.9 billion in 2018 to $11.7 billion in 2019 according to Census Bureau data.[45] Although the USJTA, resulting in lower tariff rates on most U.S.

[45] U.S. Census Bureau Trade Data, accessed via U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), Global Agricultural Trade System, accessed October 2020, at https://apps.fas.usda.gov/Gats/ExpressQuery1.aspx.

agricultural products in the near term, should improve the outlook for U.S. agricultural exporters, U.S. agricultural exports in 2020 have been hampered by the Coronavirus Disease 2019 (COVID-19) pandemic. U.S. agricultural export value from January through July 2020 is 4% below the level in 2019. USDA forecasts that U.S. exports to Japan may reach $11.6 billion for 2020, 1% lower than the value of exports in 2019.[46]

Issues for Congress

The USJTA and the approach the Trump Administration took to negotiate it represent a significant shift in U.S. trade policy.[47] Given its constitutional authority to regulate foreign commerce, Congress may reflect on whether this shift aligns with congressional objectives. The Administration's implementation of the Stage-One USJTA, without the approval of Congress, an unprecedented move for U.S. free trade negotiations, has prompted debate among some Members over the appropriate congressional role.[48]

Congress may wish to consider the impact of the agreement on the U.S. economy, including the implications of completing (or not completing) a broader second-stage deal with Japan, and how a staged approach affects the United States' ability to negotiate additional agreements. The Stage-One USJTA may have a modest overall effect on the U.S. economy, given that it covers a small share of bilateral trade, but it could be significant for the U.S. agricultural exporters that will enjoy improved access into the highly protected Japanese market.

USJTA did not improve market access for some agricultural products such as rice; barley and barley products other than malt; butter; skim and other milk powder; cocoa products; evaporated and condensed milk; edible fats and oils; vegetable preparations; coffee, tea, and other preparations; chocolate, candies, and confectionary; and sugar. During the TPP negotiations, Japan had agreed to improve access for six products that are sensitive for its agricultural sector—beef, pork, dairy, wheat, rice, and sugar—because TPP would open access for Japanese products into 11 markets.[49] A bilateral negotiation with the United States does not provide the same opportunity for Japan.

U.S. agricultural stakeholders[50] and some Members of Congress have urged the Administration to engage in a comprehensive "stage-two" negotiation.[51] In particular, these Members want the USJTA to offer market access to U.S. dairy products that is similar to that offered by Japan to

[46] Bart Kenner and Hui Jiang, *Outlook for U.S. Agricultural Trade*, USDA, Economic Research Service (ERS), AES-113, August 26, 2020.

[47] For a broader discussion of issues, see CRS Report R46140, *"Stage One" U.S.-Japan Trade Agreements*, coordinated by Brock R. Williams.

[48] "Ways & Means Members Press USTR for Answers on U.S.-Japan Trade Agreement in Letter to Lighthizer," *Inside U.S. Trade*, November 27, 2019.

[49] Testimony of Darci Vetter, House Ways and Means Subcommittee on Trade, *U.S.-Japan Trade Agreements* hearing, 116th Cong., 2nd sess., November 20, 2019, at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/U.S.-Japan%20Trade%20Agreements%20Hearing%20Transcript.pdf.

[50] Comments from the Agriculture Policy Advisory Committee in the U.S. Trade Advisory Report, "Advisory Committees Reports Pursuant To The Bipartisan Congressional Trade Priorities and Accountability Act of 2015 and the Trade Act of 1974 Trade," October 4, 2019.

[51] Letter to U.S. Trade Representative Lighthizer from Representatives Ron Kind, Suzan DelBene, Gwen Moore, Mark Pocan, and Peter Welch, September 20, 2019, at https://kind.house.gov/sites/kind.house.gov/files/9.20.19%20-%20USTR%20Japan%20Trade%20Agreement.pdf.

CPTPP countries. They also emphasize the need to negotiate access for food products sold under accepted common names and prevent these from being protected as GIs.[52]

A staged-partial bilateral agreement may allow the United States to quickly reach an agreement to improve access for selected goods so as to provide the same level of access to many U.S. agricultural products that were disadvantaged by Japan's agreements with the EU and with CPTPP member countries. However, the full benefit of such an agreement may be contingent on reaching a comprehensive agreement in follow-up negotiations. Japan may not view a second stage bilateral agreement with the United States as being equivalent to an agreement with 11 trading partners, as under the CPTPP, and may be less inclined to provide access to U.S. rice, sugar, and the remaining dairy products in subsequent negotiations.[53]

Congress may also wish to weigh the overall economic and geopolitical benefits to the United States from a staged approach to a bilateral negotiation versus one involving a comprehensive agreement. Some Members of Congress have raised concerns that the United States may be withdrawing from its leadership role in Asia while China is actively engaged in negotiating the Regional Comprehensive Economic Partnership.[54] A bilateral agreement, such as the agreement with Japan, may not allow the United States to shape broader alliances in the Asia-Pacific region or to play a significant role in shaping global trade rules and standards governing non-tariff measures such as those relevant for GIs, agricultural biotechnology, or trade in organic products.

The limited scope of the USJTA commitments has led several analysts and some Members of Congress to question the extent to which the agreement adheres to Article XXIV of the General Agreement on Tariffs and Trade under the WTO.[55] This provision requires regional trade agreements outside the WTO to eliminate duties and other restrictive regulations of commerce on "substantially all trade" between the parties.[56] The EU, Israel, China, Canada, and New Zealand have also questioned Japan whether its Stage-One agreement with the United States conforms to Japan's obligations under its WTO commitments.[57]

Congress may wish to consider whether the Stage-One agreement is consistent with U.S. obligations under the WTO. Congress may examine whether the limited scope of the agreement sets precedents for other countries to negotiate other partial trade agreements that liberalize trade

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[52] Fifty-one Members of Congress Letter to U.S. Trade Representative Lighthizer and USDA Secretary Perdue, July 8, 2020, at https://kind.house.gov/media-center/press-releases/reps-kind-smucker-harder-and-marshall-lead-bipartisan-letter-urging.

[53] For a discussion of this, see testimony of Darci Vetter, House Ways and Means Subcommittee on Trade, *U.S.-Japan Trade Agreements* hearing, 116th Cong., 2nd sess., November 20, 2019, at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/U.S.-Japan%20Trade%20Agreements%20Hearing%20Transcript.pdf.

[54] Questions by Representative Terri A. Sewell to Ambassador Darci Vetter at the House Ways and Means Subcommittee on Trade, *U.S.-Japan Trade Agreements* hearing, 116th Cong., 2nd sess., November 20, 2019, at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/U.S.-Japan%20Trade%20Agreements%20Hearing%20Transcript.pdf; and Fox Business News, "Mornings with Maria Interview with Sen. Marsha Blackburn," August 3, 2020. The Regional Comprehensive Economic Partnership is a proposed free trade agreement in the Asia-Pacific region among Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, Australia, China, Japan, New Zealand, and South Korea.

[55] "Analysts Question WTO Compliance of U.S.-Japan Deal," *Inside U.S. Trade*, September 17, 2019.

[56] The WTO does not define "substantially all trade," but member countries have generally interpreted it to mean 90% of trade. For the provision text, see https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXXIV. The General Agreement on Trade in Services (GATS, Article V) has similar requirements for other trade agreements to include "substantial sector coverage."

[57] Isabelle Isco, "Japan Defends U.S. Trade Deal Amid Scrutiny At The WTO," *Inside U.S. Trade*, October 15, 2020.

on a limited set of products or sectors that could potentially discriminate against the United States, as well as potentially undermine respect and adherence to the letter and spirit of the WTO.

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